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Nos. 97, 98 and 99

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., APPELLANTS

v.

BOSTON AND MAINE RAILROAD, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR APPELLEES THE STATE OF NEW YORK, THE PORT OF NEW YORK AUTHORITY, THE CITY OF NEW YORK, ET AL.

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
The Capitol,
Albany 1, New York.

SIDNEY GOLDSTEIN,
111—8th Avenue,
New York 11, New York.
Attorney for Appellees, The Port of New York Authority, et al.

LEO A. LARKIN,
Corporation Counsel of the City of New York,
Municipal Building,
New York, New York.

Of Counsel:
(See inside Cover)

Of Counsel:

PAXTON BLAIR,
Solicitor General of the State of New York,
DUNTON F. TYNAN,
Assistant Solicitor General of the State of New York,
The Capitol,
Albany 1, New York.

F. A. MULHERN,
111—8th Avenue,
New York 11, New York.

MORRIS HANDEL,
SAMUEL MANDELL,
Assistant Corporation Counsel of the City of New York,
Municipal Building,
New York, New York.

CHARLES W. MERRITT,
25 Broadway,
New York, New York.

WALTER J. MYSKOWSKI,
711—14th Street,
Washington 5, D. C.

ARTHUR L. WINN, JR.,
SAMUEL H. MOERMAN,
Investment Building,
Washington 5, D. C.

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BRIEF FOR APPELLEES THE STATE OF NEW YORK, THE PORT OF NEW YORK AUTHORITY, THE CITY OF NEW YORK, ET AL.

This brief is submitted on behalf of The State of New York, The Port of New York Authority, The City of New York, Newark Association of Commerce and Industry, New Jersey Industrial Traffic League and other parties* having an interest in the Port of New York.

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* Chamber of Commerce of the State of New York, Brooklyn Chamber of Commerce, Inc., Belleville Manufacturers' Association, Bergen County Chamber of Commerce, The Bronx Board of Trade, Chamber of Commerce, Garfield, New Jersey, Chamber of Commerce, Irvington, New Jersey, Chamber of Commerce of Eastern Union County, Clifton Chamber of Commerce, Commerce and Industry Association of New York, Inc., Hoboken Chamber of Commerce, Ironbound Manufacturers' Association, Inc., The Maritime Association of the Port of New York, New York Board of Trade, New York Shipping Association, Inc., Queensborough Chamber of Commerce, The Shippers' Conference of Greater New York, The West New York Chamber of Commerce and West Side Association of Commerce in the City of New York.

The Port of New York includes not only New York City, but also more than 200 municipalities which make up the New York-New Jersey Port District (R. 1803). That district includes most of the nine counties in the northeastern part of New Jersey, as well as nine counties in southerly New York State (R. 1804). It includes 650 miles of navigable waterfront (R. 1805).

The brief submitted on behalf of the New York Central and other Railroads serving the New York-New Jersey Port District has stated the law and the facts showing that the District Court was correct when it found that the decision of the Commission was erroneous in law and lacked the rational basis necessary to uphold it. Accordingly, this brief will be confined to a short statement.

The Appellees on behalf of which this brief is submitted represent governmental, business, shipping and commercial interests which have a vital need for the New York-New Jersey Port District to obtain a fair and equal opportunity to compete for export-import traffic to and from the Affected Territory. Those interests also have a vital need for the Northern Tier Railroads serving the New York-New Jersey Port District to improve their deteriorating financial position so that they will be able to maintain efficient and adequate transportation services to and from that Port District.

These Appellees did not appear in these proceedings in the role of complainants seeking any order to compel the Appellee Northern Tier Railroads to reduce their export-import rates. This proceeding is not a port complaint case.

The question in this proceeding is whether the Appellee Northern Tier Railroads had a lawful right voluntarily to put their rates on a basis of rail-ocean equality via the New York-New Jersey Port District so as to create equal competitive opportunity with the Appellant Southern Tier Railroads moving the traffic via the ports of Baltimore, Philadelphia and Hampton Roads.

The Appellees, on behalf of which this brief is submitted, appeared in this proceeding in the role of intervenors in support of those rate reductions made voluntarily by Appellee Northern Tier Railroads.

Under the existing rate differentials favoring the Southern Tier ports, New York is practically the only large port on the United States coast line which does not have an opportunity to compete for export-import traffic to and from the Affected Territory under the long established principle of rail-ocean rate equality.

The philosophy of the Commission seems to be because nature bountifully gave the Port of New York an excellent harbor and because huge investments and continuous enterprise, over many years, have built up that Port, that, therefore, it should be the object of discrimination in railroad export-import rates.

The evidence in the record shows that of the export-import traffic which moves to and from the Affected Territory via the Port of New York, on the one hand, and via Baltimore, on the other, 62.7% moved through the port of Baltimore and only 37.3% through the Port District of New York (R. 3820). This was the kind of comparative treatment which the Commission ap-

parently concluded should be stabilized under the existing rate differentials favoring the port of Baltimore.

To be sure, the Appellants and the Commission also referred to the large amount of total export-import traffic which moves into and out of the Port District of New York. That traffic is irrelevant to the present proceeding. The rate reductions in issue in these proceedings do not apply to that traffic. To inject it into these proceedings is to raise false issues.

As the following comparisons and facts establish, the position of Appellants and the Commission is wrong even as to these false issues which they raise.

During the ten-year post-war period from January 1, 1946 to December 31, 1955, the following amounts were spent by the indicated ports for new construction of port facilities and for modernization and rehabilitation of general cargo and special bulk facilities (R. 1803):

New York	$114,630,000
Philadelphia	$ 33,810,000
Baltimore	$ 32,595,000
Newport News (Hampton Roads)	$ 24,015,000

Thus, New York invested more money in port development than Philadelphia, Baltimore and Newport News combined.

The City of New York, which includes only a part of the New York-New Jersey Port District, has municipally-owned waterfront property with an assessed

value of $325,000,000 and, during the seven years prior to the hearing before the Commission, the City spent $27,000,000 for capital improvements and betterment of its piers (R. 2253).

The various members of the New York-New Jersey Port District have made investments in 200 piers capable of berthing 400 ships at one time (R. 1805). The total population in the area in that Port District is about 13,000,000 (R. 1803). More than $2,000,000,000 of salaries are dependent on port jobs in that district (R. 1820, Ex. C). Those salaries, when spent for food, shelter and the like, generate a total of more than $6,000,000,000 of income for people living in that Port District (R. 1820, Ex. C). The activities in that Port District are important not only to the people who live in it but also to this nation as a whole. The Federal Government spent more than $196,000,000 for navigation projects in New York harbor from 1905 to June 30, 1956, recognizing the importance which this Port District has to the nation as a whole (R. 1809).

If, contrary to law, the Commission is to base its decisions on its views as to what the general welfare of the Port of New York should be as compared with other ports, then due consideration should be given to the welfare of the people living in that Port District. Also, due consideration should be given to the welfare of this nation, which that Port District has served so dramatically in the past and could continue to so serve in the future if it is not denied a fair and equal opportunity to maintain a flow of commerce through its great port facilities.

What has been happening to the total export-import traffic which moves into and out of the Port of New York since 1935 destroys the arguments of Appellants that this Port District has any dominating hold on the total export-import traffic as compared with the Baltimore and other Southern Tier ports.

In 1933, shortly before equalization of the ocean rates was completed in 1935, the total import and export tonnages through the four Northern Tier Ports of Portland, Me., Boston, Albany and New York were almost double the tonnages which flowed through the three Southern Tier Ports of Philadelphia, Baltimore and Hampton Roads. By 1955, twenty years after ocean rates were equalized while rail differentials continued, the reverse was true (R. 1703, 1705). The following table indicates the relative percentage positions of the two tiers in both years.

	1933	1955
Northern Tier Ports	65.3%	36.5%
Southern Tier Ports	34.7%	63.5%

New York is competing for export-import traffic to and from the Affected Territory with every major port south of New York and all the way to the Mexican border (R. 1853, 1866, 1872-73). From points in the Affected Territory, including Chicago, the export-import rates via those ports to the south of New York are in each case lower than the rates via New York (R. 1928). This is true although the short line rail distances from Chicago to those southern ports range up to 1257 miles,

as compared with 890 miles to New York (R. 1928). Under the existing rates, New York Railroads suffer a drastic competitive disadvantage; and the Northern Tier Railroads serving New York are denied, under the existing differentials, the right to compete under the generally prevailing principle of rail-ocean rate equality.

The City of New York had outstanding at the time of the hearing before the Commission, $161,000,000 of bonds issued to finance its municipally-owned piers. The facilities of the Port can accommodate a large amount of additional export-import freight traffic. Many facilities are in partial disuse; some piers in favorable locations are not being used; and eight City piers on Staten Island have been unused for many years although they have direct rail connections (R. 2261, 2264).

However, as we have said, this is not a port complaint case in which we sought the right to compel railroads to eliminate the differentials. The sole question which is involved in this case, and which the District Court reviewed, is whether the voluntary action of the Northern Tier Railroads in eliminating those differentials was an unlawful exercise of their managerial discretion.

The District Court correctly found that when the Commission concluded that such voluntary action on the part of Appellee Railroads was unlawful, its conclusion was erroneous in law and lacked a rational basis to uphold it.

CONCLUSION

The judgment of the District Court should be affirmed in all respects.

Respectfully submitted,

LOUIS J. LEFKOWITZ,
Attorney General of
the State of New York,
The Capitol,
Albany 1, New York.

SIDNEY GOLDSTEIN,
111—8th Avenue,
New York 11, New York.
Attorney for Appellees,
The Port of New York
Authority, et al.

LEO A. LARKIN,
Corporation Counsel of
the City of New York,
Municipal Building,
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Of Counsel:

PAXTON BLAIR,
Solicitor General of
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of the State of New York,
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of the City of New York,
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